1   **JUDICIAL NOMINATING COMMISSION**

2   **AMENDMENTS**

3   1998 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Christine R. Fox-Finlinson**

6   AN ACT RELATING TO THE ELECTION CODE; SPECIFYING PROCEDURES FOR

7   SELECTING JUDICIAL NOMINEES TO BE CERTIFIED TO THE GOVERNOR; MAKING

8   TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

9   This act affects sections of Utah Code Annotated 1953 as follows:

10   AMENDS:

11   **20A-12-104 (Effective 07/01/98)**, as last amended by Chapter 249, Laws of Utah 1997

12   *Be it enacted by the Legislature of the state of Utah:*

13   Section 1. Section **20A-12-104 (Effective 07/01/98)** is amended to read:

14   **20A-12-104 (Effective 07/01/98). Procedures governing meetings of judicial**

15   **nominating commissions.**

16   (1) The Judicial Council shall:

17   (a) enact rules establishing procedures governing the meetings of the judicial nominating

18   commissions; and

19   (b) ensure that those procedures include:

20   (i) a minimum recruitment period of 30 days and a procedure to extend that period for an

21   additional 30 days if fewer than nine applications are received for a judicial vacancy;

22   (ii) standards for maintaining the confidentiality of the applications and related documents;

23   (iii) standards governing the release of applicant names before nomination;

24   (iv) standards for destroying the records of the names of applicants, applications, and

25   related documents upon completion of the nominating process;

26   (v) an opportunity for public comment concerning the nominating process, qualifications

27   for judicial office, and individual applicants;

HB0157

1   (vi) evaluation criteria for the selection of judicial nominees;

2   (vii) procedures for taking summary minutes at nominating commission meetings;

3   (viii) procedures for simultaneously forwarding the names of nominees to the governor,

4   the president of the Senate, and the Office of Legislative Research and General Counsel; and

5   (ix) standards governing a nominating commissioner's disqualification and inability to

6   serve.

7   (2) (a) (i) Except as provided in this Subsection (2)(a)(ii), if a judicial nominating

8   commission receives 15 or more applications to fill a judicial vacancy, the nominating commission

9   shall submit at least five names to the governor.

10   (ii) Notwithstanding Subsection (2)(a)(i), if five applicants do not receive the required

11   number of votes as specified in Subsection [(2)(c)] (3) from the nominating commission, the

12   commission shall submit only the names of applicants that received the required number of votes,

13   but must submit the names of at least three applicants.

14   (b) In determining whether or not to submit an applicant's name to the governor, a

15   commission may not decline to consider an applicant merely because:

16   (i) the nominating commission had declined to submit that candidate's name to the

17   governor to fill a previous vacancy;

18   (ii) a previous nominating commission had declined to submit that candidate's name to the

19   governor; or

20   (iii) that nominating commission or a previous nominating commission had submitted the

21   applicant's name to the governor and the governor selected someone else to fill the vacancy.

22   [(c) The vote required to submit an applicant's name to the governor is as follows:]

23   [(i) if all seven members of the nominating commission are present and considering

24   applicants, a vote in favor of the applicant by four commissioners submits the candidate's name

25   to the governor;]

26   [(ii) if only six members of the nominating commission are present and considering

27   applicants because one member is unable to attend, has recused himself or is otherwise

28   disqualified, a vote in favor of the applicant by four commissioners submits the candidate's name

29   to the governor;]

30   [(iii) if only five members of the nominating commission are present and considering

31   applicants because two members are unable to attend, have recused themselves, or are otherwise

1   ~~disqualified, a vote in favor of the applicant by three commissioners submits the candidate's name~~

2   ~~to the governor; and]~~

3   ~~[(iv) if only four members of the nominating commission are present and considering~~

4   ~~applicants because three members are unable to attend, have recused themselves, or are otherwise~~

5   ~~disqualified, a vote in favor of the applicant by three commissioners submits the candidate's name~~

6   ~~to the governor.]~~

7   (3) (a) Voting for the selection of nominees may differ from voting during the screening

8   process. Voting may occur in one or two more rounds, depending on the outcome of each round.

9   Each commissioner is allotted a number of votes for each round equal to the number of nominees

10   remaining to be selected. For the selection of nominees for a trial court, each commissioner has

11   five votes during the first round. If one nominee is selected during the first round, each

12   commissioner has four votes during the next round. If there are multiple vacancies, the number

13   of votes allotted to each commissioner during each round of voting is multiplied by the number

14   of vacancies, and the commission selects nominees as a pool without matching any vote or any

15   candidate to a particular vacancy.

16   (b) Voting is by confidential ballot.

17   (c) A commissioner may not cast more than one vote for a single candidate during any

18   single round of voting.

19   (d) A commissioner must cast all allotted votes in each round.

20   (e) Any candidate receiving in any round a number of votes one less than the number of

21   voting commissioners present is selected as a nominee. If, after any round of voting, a candidate

22   receives two or fewer votes, the candidate is removed from consideration during subsequent

23   rounds of voting. The commission should further debate the qualifications of candidates who are

24   neither selected nor removed from consideration before conducting the next round of voting.

25   Voting and discussion continues until the requisite number of nominees have been selected.

26   (f) The commission can reconsider its action on any candidate upon a majority vote to do

27   so.

28   (g) If after full deliberation the commission is unable to agree upon the required number

29   of nominees in the above described manner, those candidates not removed from consideration shall

30   be considered to be tied within the meaning of Section 20A-12-105(3), and the commission may

31   certify up to two additional names.

1   (h) The total vote tally, but not the vote of individual commissioners, is recorded in the

2   minutes. After the vote tallies are verified and recorded, the ballots are destroyed.

3   (4) Unless the commission determines that there are not five qualified applicants, a list of

4   five names shall be certified to the governor for his selection, but in no event shall fewer than three

5   names be certified.

6   (5) The governor may reject the initial list sent by the commission and request a new list,

7   but the timelines for selection remain as provided by the Utah Constitution.

8   [(3)] (6) A judicial nominating commission may not nominate a justice or judge who was

9   not retained by the voters for the office for which the justice or judge was defeated until after the

10   expiration of that term of office.

11   [(4)] (7) Judicial nominating commissions are exempt from the requirements of Title 52,

12   Chapter 4, Open and Public Meetings, and Title 63, Chapter 46a, Utah Administrative Rulemaking

13   Act.

14   Section 2. **Effective date.**

15   This act takes effect on July 1, 1998.

Legislative Review Note
    as of   1-27-98 7:00 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel